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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,278	07/31/2001	Herm Snyder	0068.00	4703

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NEKTAR THERAPEUTICS
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EXAMINER

KISHORE, GOLLAMUDI S

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 11/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/919,278

Applicant(s)

SNYDER ET AL.

Examiner

Gollamudi S. Kishore, Ph.D

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10-16-06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The response dated 4-4-06 is acknowledged.

Claims included in the prosecution are 19-32.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 19-32 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Ketcham et al. (U.S. Patent No. 4,871,489) in view of Backstrom et al. (U.S. Patent No. 5,952,008), Forrester et al. (U.S. Patent No. 4,590,206) as set forth in the previous action.

Applicant's arguments have been fully considered, but are not found to be persuasive. Applicant argues that Ketcham discloses an apparatus for producing liquid droplets of solutions of metal oxides or metal oxide precursors and that in Ketcham the vibratory element causes the orifice plate to vibrate and is located away from the flow of the liquid feed. These arguments are not persuasive. First of all, Ketcham on col. 2, line 66 teaches the preparation of solid particles besides the liquid droplets using the apparatus. Secondly, instant claims recites, 'forcing said liquid stock into a manifold defined between a vibratable element and the plate and forcing the feed stock through the plate'. A careful examination of Figure 1 in Ketcham shows that the liquid feed is forced through the plate and the vibrating element. Instant claims as recited do not require the presence of the vibratable element to be inside. The reference thus, meets the requirements of instant claims. With regard to applicant's arguments that Ketcham

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does not suggest producing particles of pharmaceutical compounds, the examiner points out that the apparatus described by Ketcham is for producing particles, the method would be the same irrespective of whether the particles produced are for pharmaceutical purpose or otherwise; there is nothing in the reference to indicate that the apparatus cannot be used for pharmaceutical compounds.

Applicant while acknowledging that Backstrom teaches that the active compounds should consists of particles having a diameter less than approximately 10 micrometers, argue that in examples of micronized active compounds the mass median diameters are in the range of 2.4 to 9.6 micrometers and that the examples do not disclose any particle size distribution are. This argument is not persuasive since Backstrom is suggestive of the claimed diameters. Applicant's arguments and as stated by applicant himself, Forrester prefers at least 50 % of the particles to be 2 to 6 in diameter; 'at least 50 %' taught by Forrester meets the requirements of instant 'at least 70 %' since it encompasses this limitation. It is within the skill of the art to produce particles having a diameter within 4 micron ranges from Forrester's teachings of '2-6'.

3. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gollamudi S. Kishore, Ph.D whose telephone number is (571) 272-0598. The examiner can normally be reached on 6:30 AM- 4 PM, alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Woodward Michael can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Gollamudi S Kishore, Ph.D
Primary Examiner
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